

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-189-E - ORDER NO. 2003-582
SEPTEMBER 30, 2003

IN RE: Joint Application for Approval of The)	ORDER GRANTING
“Energy Services Agreement” Between)	CERTIFICATION FOR
Cinergy Solutions of Rock Hill, LLC and)	THE PROVISION OF
Celanese Acetate LLC.)	HEAT (STEAM)

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Joint Application for approval of the “Energy Services Agreement” (the Agreement) between Cinergy Solutions of Rock Hill, LLC (Cinergy) and Celanese Acetate LLC (Celanese)(together, the Joint Applicants or the Applicants). The Joint Applicants have also filed a Motion to Amend Joint Application and a Motion for Expedited Review of Joint Application. Further, Duke Power (Duke) has filed a request to withdraw its Petition to Intervene. Because of the reasoning stated below, we grant the Motion to Amend the Joint Application and the Motion for Expedited Review. We also grant Duke’s request to withdraw its Motion to Intervene. Further, because we believe that our jurisdiction in this matter only applies to the provision of heat (steam) by Cinergy to Celanese for compensation, we hereby grant a Certificate of Public Convenience and Necessity to Cinergy for the provision of heat (steam) to Celanese.

II. DISCUSSION

In support of its Motions and Application, Cinergy filed the amended verified testimony of Donna L. Robichaud, General Manager of Cinergy Solutions, East Division. On September 4, 2003, Cinergy and Celanese entered into an Amended and Restated Energy Services Agreement (the Agreement). Pursuant to the Agreement, Celanese will sell certain equipment to Cinergy, and Cinergy will operate and maintain the equipment in order to provide the Celanese facility with process steam, compressed air, river water, filter water, HVAC services, refrigeration services and certain other services. Cinergy will primarily use its own employees to operate and maintain the equipment and provide the services. Celanese will continue to provide certain ancillary services to Cinergy in performing its obligation under the Agreement.

The Motion to Amend the Joint Application outlined key changes to the Agreement after it was originally filed with this Commission. The parties have deleted the purchase of spare parts, added HVAC and refrigeration services to the list of services provided by Cinergy to Celanese, added a loan of certain employees, reduced liquidated damages provisions, eliminated the reference to potable water, and made certain other changes which have no real effect on the provision of heat (steam) for compensation. Accordingly, we have no difficulty with the proposed amendments, and hereby grant the Motion to Amend the Joint Application.

With regard to the Motion for Expedited Review, the Joint Applicants request that the Commission use its discretionary authority to informally dispose of this proceeding during the Commission's regularly scheduled meeting. The grounds for this Motion are

that (1) the South Carolina Administrative Procedures Act (APA) grants the Commission flexibility regarding hearings; (2) due process requirements are satisfied if the Applicants waive the right to a hearing when there is no disputed material issue of fact; and (3) notice and the opportunity to present written evidence is sufficient to provide the procedural due process protection required under the APA. After due consideration, we agree that the Commission is afforded flexibility under the APA regarding hearings, and that due process requirements are satisfied if the Applicants waive the right to a hearing when there is no disputed material issue of fact. We also agree that notice and the opportunity to present written evidence is sufficient to provide the procedural due process protection required under the APA. We would note in the present case that proper Notice of the Agreement was given. Duke originally intervened in the matter, but has filed a request to withdraw. Further, the Joint Applicants have waived their right to a hearing and have presented evidence in the form of written verified testimony. Accordingly, we grant the Motion for Expedited Review, and we will proceed to address the merits of the Joint Application.

The parties seek authority to have Cinergy operate and provide the Celanese plant in Rock Hill, South Carolina, with, among other things, process steam for its manufacturing operation. As part of the transaction, Cinergy will buy certain existing equipment located at the Celanese Rock Hill plant and Cinergy agrees to use this and other equipment to supply Celanese its energy needs. The Joint Applicants intend that the Agreement will optimize the energy usage of existing equipment by allowing Cinergy's expertise in energy usage to provide higher reliability and lower cost energy services than

Celanese can currently accomplish on its own, which the Joint Applicants believe makes approval of the provision of steam by Cinergy a matter within the public interest. The parties anticipate no adverse effects on any consumers. The Joint Applicants therefore ask that we grant approval of so much of the Agreement that comes within this Commission's jurisdiction.

We would note that S.C. Code Ann. Section 58-5-10(3)(Supp. 2002) provides that a public utility for purposes of the Commission's jurisdiction includes, "every corporation and person furnishing or supplying in any manner heat..." (emphasis added). Further, this Commission concluded in Order No. 96-433 in Docket No. 96-189-E, dated June 27, 1996, that supplying steam is equivalent to supplying heat. At our Commission meeting, it was stated that only the equipment for the provision of the other services, such as filtered water and river water, was being furnished. We therefore hold that only the steam portion of the Agreement is within our jurisdiction, because we have denominated it as being equivalent to "heat."

After having examined all of the materials presented in this case, we hereby grant Cinergy a Certificate of Public Convenience and Necessity to provide heat (steam) to Celanese. We think that the Joint Applicants have shown that it is in the public interest to do so. We agree that Cinergy's expertise in energy usage will provide higher reliability and lower cost energy services than Celanese can currently accomplish on its own, specifically with regard to the provision of heat (steam). Further, there appear to be no adverse effects on any consumer in the State of South Carolina.

We also agree that Duke should be allowed to withdraw its Petition to Intervene in this matter. This request is granted.

III. FINDINGS OF FACT

1. Cinergy Solutions of Rock Hill, LLC and Celanese Acetate LLC filed a Joint Application for approval of an Energy Services Agreement.

2. The Joint Applicants have also filed a Motion to Amend the Joint Application and a Motion for Expedited Review of the Joint Application, along with written verified testimony.

3. The Agreement calls for Cinergy to provide heat (steam) to Celanese for its manufacturing operation.

4. The Agreement will allow Cinergy's expertise in energy usage to provide higher reliability and lower cost energy services than Celanese can currently accomplish on its own, specifically with regard to the provision of heat (steam).

5. The approval of the heat (steam) portion of the Agreement is in the public interest.

6. The provision of heat (steam) for compensation at the contract rate as provided for in the Agreement makes Cinergy a "public utility."

7. A Certificate of Public Convenience and Necessity should be granted to Cinergy for its provision of heat (steam) to Celanese.

IV. CONCLUSIONS OF LAW

1. S.C. Code Ann. Section 58-5-10(3)(Supp. 2002) provides that a public utility for purposes of the Commission's jurisdiction includes, "every corporation and

person furnishing or supplying in any manner heat...” (emphasis added).

2. Commission Order No. 96-433, dated June 27, 1996, in Docket No. 96-189-E held that supplying steam is equivalent to supplying “heat” for the purposes of S.C. Code Ann. Section 58-5-10(3)(Supp. 2002).

3. This Commission has jurisdiction over the part of the Agreement wherein Cinergy intends to provide steam to Celanese for compensation. The Commission will not exercise jurisdiction over any of the other portions of the Agreement.

4. The Motion to Amend the Joint Application is granted, since the changed provisions had no effect on the provision of heat (steam) by Cinergy to Celanese.

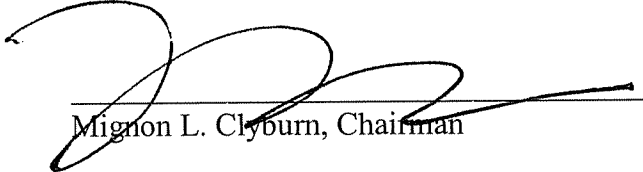
5. The Motion for Expedited Review is granted, since the proper notice and opportunity to be heard have been afforded, written verified testimony has been provided, the Intervenor Duke seeks to withdraw, and the Joint Applicants waive their right to a hearing.

6. A Certificate of Public Convenience and Necessity is granted to Cinergy for its provision of heat (steam) to Celanese for compensation at the contract rate, since said provision is in the public interest.

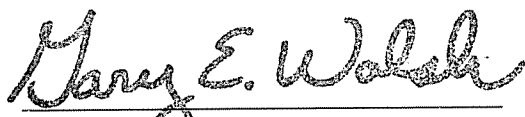
7. The request of Duke to withdraw its Petition to Intervene is granted.

8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Mignon L. Clyburn, Chairman

ATTEST:


Gary E. Walsh, Executive Director

(SEAL)